



SANDRA SHEWRY
Director

State of California—Health and Human Services Agency
Department of Health Services



ARNOLD SCHWARZENEGGER
Governor

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TO: ALL SKILLED NURSING FACILITIES

SUBJECT: PROTECTING THE SAFETY OF ALL NURSING FACILITY RESIDENTS

The California Department of Health Services' primary responsibility is to protect the health and safety of persons receiving care in health facilities. This is particularly important in long-term care facilities where some of the most vulnerable citizens make their homes.

One of the most critical components of quality care is the thoroughness with which facilities assess prospective and current residents to determine their care needs and whether they may present a risk to themselves or others. This letter is intended to remind facilities of their obligations to protect the health and safety of all residents and to make appropriate use of any and all information available to assess possible risks, and plan accordingly.

Long-term health care facilities have long been prohibited from accepting or retaining any resident for whom they cannot provide adequate care. (Health and Safety Code Section 1418.6) Facilities must conduct a thorough assessment of each resident's care needs, and develop an individual care plan for each resident. (Title 22, California Code of Regulations, Section 72311).

If a facility determines that any applicant for admission or current resident presents a danger to other residents, the licensee is required to develop and implement a plan of care to address any such risk. If a resident's needs cannot be met by a particular facility, or if the safety of individuals in the facility is endangered, those facts may provide a basis for discharge of a resident from the facility (Title 42, Code of Federal Regulations, Section 483.12).

The recent availability of the Megan's Law website (www.meganslaw.ca.gov) to provide the location and identification of individual Registered Sex Offenders provides additional information that may be appropriate to consider when making decisions about admissions, assessment and risk to the resident population. While no law requires that an applicant or resident of a skilled nursing facility disclose whether he or she is a registered sex offender, and while the presence of a registered sex offender cannot serve as the sole basis for adverse action against the applicant, resident or facility, it is incumbent upon each facility to evaluate all information that may impact on its placement decisions. This evaluation must include the individual's medical, nursing and behavioral needs, the risks that person presents to other residents, and the facility's capacity to provide appropriate care to protect the health and safety of all residents.

Facilities should also be diligent in adhering to the requirements to safeguard the confidentiality of information contained in patient health records, and to respect privacy rights of all residents. (Title 22, California Code of Regulations, Sections 72527 and 72543, and the federal Health Insurance Portability and Accountability Act [HIPAA], Title 42, Code of Federal Regulations, Parts 160 and 164).

If you have any further questions, please contact your Licensing and Certification District Office.

Sincerely,

Original signed by

Brenda G. Klutz
Deputy Director